IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

GIBBS INTERNATIONAL, INC., f/k/a Gibbs Textiles, Inc.,	)	
Plaintiff,	)	ORDER
vs.	)	C/A No. 7:96-996-13
INTERNAL REVENUE SERVICE,	)	
Defendant.	)	

After reviewing the documents submitted for *in camera* review as a result of oral arguments heard September 24, 1996, I conclude that the Internal Revenue Service did not act arbitrarily or in violation of law in refusing to release documents pursuant to the Freedom of Information Act, (FOIA). The documents refer to information exchanged pursuant to a tax treaty. The Internal Revenue Service reasonably concluded that the disclosure of the documents would chill future cooperation with foreign government treaty partners and that these documents fall within the FOIA Exemption 3, 5 U.S.C. § 552(b) (3), in conjunction with I.R.C. § 6103 (e)(7).

Accordingly, defendant's motion for summary judgment is granted. Plaintiff's cross-motion for summary judgment and motion to compel a *Vaughn* index is denied.

IT IS SO ORDERED.

G. Ross Anderson, Jr.
G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina
October 7th, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

GIBBS INTERNATIONAL, INC., f/k/a Gibbs Textiles, Inc., Plaintiff,	)	ORDER
vs.	)	C/A No. 7:96-996-13
INTERNAL REVENUE SERVICE, Defendant.	)	

This matter came before the Court on November 20, 1996 for a hearing on the plaintiff's Motion for Reconsideration or Clarification. Upon review of the pleadings submitted by the parties and after hearing oral argument on the matters, this Court denies the motion.

THEREFORE, IT IS ORDERED that the plaintiff's Motion for Reconsideration or Clarification is denied.

IT IS SO ORDERED.

G. Ross Anderson, Jr.
G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina
November 20, 1996

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

GIBBS INTERNATIONAL, INCORPORATED,
formerly known as Gibbs Textiles,
Incorporated,

Plaintiff-Appellant,

No. 96-2790

v.

INTERNAL REVENUE,

Defendant-Appellee.

Appeal from the United States District Court
for the District of South Carolina, at Spartanburg.
G. Ross Anderson, Jr., District Judge.

Argued: August 12, 1997

Decided: November 7, 1997

Before RUSSELL and HALL, Circuit Judges, and
MICHAEL, Senior United States District Judge for the
Western District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Erik P. Doerring, MCNAIR LAW FIRM, P.A., Columbia, South Carolina, for Appellant Teresa Thomas Milton, Tax Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:** Tracey C. Green, MCNAIR LAW FIRM, P.A., Columbia, South Carolina, for Appellant, Lorretta C. Argrett, Assistant Attorney General, Jonathan S. Cohen, J. Rene Josey, Jr., United States Attorney, Tax Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Gibbs International (Gibbs) appeals the district court's judgment in this case involving a Freedom of Information Act[2] (FOIA) request. Gibbs, the plaintiff, buys and sells used textile equipment on a world-wide basis. One of its wholly-owned subsidiaries is based in Germany. During the course of an audit of Gibbs, the Internal Revenue Service wrote German tax officials suggesting they participate in a simultaneous tax examination of Gibbs and its German subsidiary. After Gibbs learned of the IRS' letter, it requested the IRS to disclose the contents of the letter under the terms of FOIA. The IRS denied Gibbs' request, claiming the letter was exempt under the Freedom

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[2] 5 U.S.C.A. § 552 (West 1996 & Supp. 1997).

of Information Act.[3] Gibbs filed an administrative appeal with the IRS. The IRS failed to respond within 20 days, as required by law.[4]

Gibbs then filed suit in district court,[5] seeking disclosure of the letter and seeking to compel the IRS to produce a *Vaughn* index.[6] The district court examined the documents *in camera* and granted summary judgment in favor of the IRS. The district court denied Gibbs' request for reconsideration, however, and this appeal followed.

We have reviewed the record, the briefs and heard oral argument by the parties. We find no error in the district court's decision and therefore affirm its grant of summary judgment in favor of the IRS.

AFFIRMED

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[3] *See id.* § 552(a)(6)(C)(b) (West 1996) (exempting certain information).

[4] *See id.* § 552(a)(6)(A)(ii) (West 1996) requiring agency to respond within 20 days to FOIA request).

[5] *See id.* § 552(a)(6)(C) (West 1996) (providing that person has exhausted administrative remedies when agency fails to act on appeal within 20 days, and therefore is entitled to maintain action in district court).

[6] A *Vaughn* index is a description of each item withheld by the agency in response to a FOIA request. It must be sufficiently detailed that the district court can determine whether the material is exempt from disclosure under FOIA. *Ethyl Corp. v. United States Environmental Protection Agency*, 25 F.3d 1241, 12144 n.1 (4th Cir. 1994); *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

GIBBS INTERNATIONAL, INC., f/k/a Gibbs Textiles, Inc.,	)	
Plaintiff,	)	
vs.	)	C/A No. 7:96-996-13
INTERNAL REVENUE SERVICE,	)	
Defendant.	)	

DECLARATION OF STEPHEN H. FLESNER

I, Stephen H. Flesner, pursuant to the provisions of 28 U.S.C. § 1746, state:

1. I am the Disclosure Officer of the Office of the Assistant Commissioner (International), Internal Revenue Service (IRS). I was promoted to this position in 1996, after having held the position of Assistant Disclosure Officer since 1992. I have been employed by the IRS in various capacities for approximately fourteen years.

2. Among my duties as Disclosure Officer is the determination pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as to whether to release documents regarding communications between the

Competent Authorities of the United States and countries with which the United States has income tax treaties or exchange-of-information agreements. Each party to a treaty or agreement designates a Competent Authority to act on behalf of and bind the party. The United States Competent Authority is the Assistant Commissioner (International). My determination regarding the confidentiality and disclosure of documents pertaining to communications between Competent Authorities includes information obtained or sought from foreign Competent Authorities under tax treaties or exchange-of-information agreements between the United States and foreign nations.

3. I have reviewed and am personally familiar with the responsive records in this case. The IRS asserts FOIA Exemption 3, 5 U.S.C. § 552(b)(3), in conjunction with I.R.C. § 6103(e)(7) as the basis for withholding in their entirety the following five pages, which were the only records responsive to the Plaintiff's January 18, 1996 FOIA request.

A. Page 1. This document is a cover letter from the Assistant Commissioner (International) to a foreign Competent Authority proposing a Simultaneous Examination of the Plaintiff and one of its foreign subsidiaries. The document evidences a decision by the United States Competent Authority to request the cooperation of a foreign Competent Authority, discloses to a foreign Competent Authority information respecting the Plaintiff, and solicits a foreign Competent Authority's views on the Proposal for Simultaneous Examination.

B. Pages 2-5. This document is a United States Simultaneous Examination Proposal. It evidences a decision by the United States Competent Authority to request the cooperation of a foreign Competent Authority, discloses to a foreign Competent Authority information on the Plaintiff and its foreign subsidiary, and suggests an exchange of documentation between the United States Competent Authority and a foreign Competent Authority.

4. I.R.C. § 6103(e)(7) provides that "return information with respect to any taxpayer may be open to inspection by or disclosure to any person . . . if the Secretary determines that such disclosure would not seriously impair Federal tax administration." It is the view of the United States Competent Authority that the release of references to information provided to or requested from a tax treaty partner, which was compiled by the IRS with respect to the potential tax liability of the Plaintiff, would chill the future cooperation of foreign governments and tax treaty partners. Documents and information provided by foreign governments and tax treaty partners are often essential elements in civil examination or criminal tax investigations with respect to the determination of liability under the Internal Revenue Code. If treaty partners were to cease or limit their cooperation with respect to exchanges of information, so that information they provided would not exist in IRS files that might be subject to a FOIA request, the IRS would be severely hampered in its civil examinations, criminal investigations, and ultimate enforcement capabilities under the Internal Revenue Code. Consequently, disclosure pursuant to the Plaintiff's FOIA request of the

documents provided to a foreign Competent Authority would seriously impair Federal tax administration.

6. I have, therefore, made the determination, pursuant to the authority delegated to the Assistant Commissioner (International) by the Commissioner of Internal Revenue in Delegation Order No. 156 (Rev. 34), paragraph 1(b) (attached) and to me by the Assistant Commissioner (International) in International Delegation Order No. 36 (attached), that disclosure of the documents discussed above in Paragraph 3 would seriously impair Federal tax administration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of May, 1996.

Stephen H. Flesner
STEPHEN H. FLESNER
Disclosure Officer
Office of Assistant Commissioner
(International)
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024